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# Tidelands: Analysis of Southeastern Massachusetts Municipal Bylaws

Heath Hixson

Nov. 15, 2008

Analysis completed for Nature Conservancy of Massachusetts

## Summary

Municipal bylaws in southeastern Massachusetts appear to accommodate conservation of tidelands areas by private organizations, such as the Nature Conservancy. This is an analysis of general and zoning bylaws of 28 communities on or near the Atlantic Ocean coastline in southeastern Massachusetts. By and large, these communities have general bylaws and/or zoning bylaws aimed at conserving environmentally sensitive areas, including coastal areas within the municipality's boundaries. The Nature Conservancy and other private organizations could work with these communities to achieve conservation goals through the use of existing legal frameworks.

At least three common zoning methods of conservation appear to exist among the communities. First, many communities have bylaws that create special zoning districts to further protect a specific natural area or feature from development. These districts might allow certain types of limited building within the district. Some communities have marine-related zoning districts. However, these districts are often more focused on protecting commercial and recreational uses rather than providing for environmental and conservation efforts. Second, the bylaws of many communities have targeted provisions with conservation themes. These provisions often allow for common ownership of open space by either the municipality, private organizations, or corporations that intend to permanently maintain the area as open space. Finally, the communities all have a conservation tone within their bylaws that looks to protect natural areas and may present opportunities for conservation groups. Nearly all communities have either a general wetlands provision or other environmental protection provision within their general bylaws. These provisions expressly list natural areas to be conserved and regulate development.

The bylaws of the communities appear on their face to be friendly to the conservation of natural areas by private organizations. At no point in the analysis did there appear to be legal language

preventing private conservation of tidelands. In fact, the various bylaws seem to welcome conservation through regulatory protection mechanisms, such as requiring open space acreage in residential developments and allowing conveyance of the fee to a third party group to protect in perpetuity.

However, there was not much language among the bylaws specifically allowing the private ownership of just tidelands, nor was there much language specifically discussing the legality of severing those tidelands from upland areas in terms of ownership. Indeed, subdivision language in the bylaws of several communities are a cause for concern because they appear to not allow the subdivision of land unless all parcels front on a “public way” for access. Whether a waterway could be considered a “public way” remains unclear. Further, it is unclear whether these subdivision regulations apply to land where conservation will be the sole use and no building will take place.

Although, many of the conservation provisions in the bylaws prohibit destructive activities within 100 feet of the coastline in protected areas. It is because of the latter idea and the themes mentioned above that arguably the communities would seem open to embracing the protection of tidelands. Thus, the Nature Conservancy's goals could likely be realized through using the existing legal framework plus working with communities to enhance bylaws to address conservation of tidelands.

### **Special Zoning Districts**

Zoning districts with specific purposes are a common method that communities in the region are using to promote conservation and may present opportunities for private organizations. The range of these districts includes shell fisheries, districts that prohibit the construction of docks and piers in particular areas to protect public trust rights, and districts specifically tailored to protect coastal areas and submerged lands. General characteristics of these districts include express language describing boundaries, listing protected environmental values and stating activities regulated in these districts.

#### *Specific Natural Feature Districts*

A common special district among the communities is one related to a certain type of natural feature or wildlife habitat. These types of districts specifically address a natural feature that the community wants to protect. Beaches, marshes and shell fish areas are commonly protected.

Bylaws protecting “shell fisheries” and regulating activity are part of the zoning code in many communities. One example is the town of Barnstable. A Barnstable bylaw states that the community reserves the right to regulate shell fishing within its district. Code of the Town of Barnstable, Chapter 188, Shellfisheries. Barnstable has created a “Shellfish Constable” and uses its home rule powers to retain the authority to issue shell fishing licenses. Id. at § 188-1. The provision grants much of the power to the town manager. That manager is given the ability to grant permits, open and close shellfisheries, enforce rules and regulations, promote propagation and retain emergency action powers. Id. at § 188-5. Other communities have similar bylaws regulating shellfisheries.

Other special districts protect certain natural areas. A prime example is Falmouth's Black Beach Great Sippewissett Marsh District of Critical Planning Concern. Code of the Town of Falmouth, Chapter 235, Wetlands Protection. In this district, the community's bylaw specifically states what it is seeking to protect, such as wildlife habitat and coastal ecosystems. Specifically, the town's code states that coastal ecosystems “which support the continued viability of harvestable shellfish and finfish habitat” are “expressly protected” within this district. Id. Only three of the 28 communities analyzed specifically have these districts of “Critical Planning Concern.”

Some special districts in other communities, such as the districts of critical planning, include tidelands areas. However, there is little language defining whether the boundaries of the districts include submerged areas. Id. Falmouth prohibits activities such as building and dredging in this area. Falmouth, § 235-2. Another example is Wellfleet's National Seashore Park district, Town of Wellfleet Zoning Bylaws, § 3.2, National Seashore Park. Wellfleet allows only certain types of residential and commercial uses, but these uses cannot conflict with the “character of the park” and federal

environmental protections in the park. Id.

### *Overlay Districts*

Another type of special district within these communities is districts that overlay other zoning districts. These districts commonly work in tandem with districts mentioned above as traditional residential zoning districts. The goal of these overlay districts appears to provide additional protections for certain types of environmentally sensitive areas or ban certain activity in a sensitive area.

An overlay district example is Barnstable's "Dock and Pier Overlay District" bylaw. Code of the Town of Barnstable, § 240-37, Dock and Pier Overlay District. This bylaw's stated goal is to protect public trust rights and public access along the "public tidelands" by limiting private dock and pier construction in certain residential areas. The bylaw prohibits construction and/ or installation of docks and piers in the district. Id. Barnstable's district allows the reestablishment of damaged or destroyed piers, but does not allow the expansion of existing docks. Id. at E & F. The goal is to protect the ability of the public to access the shore, shellfish, or participate in recreational activities such as boating or kayaking. Barnstable, § 240-37.

Another example of an overlay district is Falmouth's Coastal Pond Overlay District, Code of the Town of Falmouth, Chapter 240, Article XXI, Coastal Pond Overlay District, § 240-97. This bylaw protects "swimmable, fishable and usable water" through allowing development that accommodates conservation. The overlay district is applied to all residential uses within the district. However, three areas are separated in the district, with different levels of regulations. So-called "high quality" areas have more stringent standards for not affecting water quality than "stabilization areas" and "intensive water activity areas." Falmouth, § 240-100. More stringent standards may include reduction in the number of lots in a subdivision, reductions in square footage of a proposed building, and superior septic systems. Id.

One community has specifically addressed the issue of submerged lands in an overlay district

that protects its shore line. In Chatham, that community defines “submerged lands” within its zoning code to include “salt waters within the territorial limits of the town” and submerged lands “between the mean highwater line and the outermost town boundary.” Chatham Protective Bylaw, § II (B)(97). Chatham further protects such lands with an overlay district that covers all submerged lands along the town's coast and areas subject to flooding in the 100-year flood plain. Chatham § IV(A)(5). Within this district, named the “Coastal Conservancy District,” the community regulates the construction and expansion of piers, structures and catwalks. The bylaw also grants jurisdiction over the area to the community's Conservation Commission. *Id.* Chatham's specific inclusion of “submerged lands” appears to be an exception to the language used in the bylaws in other communities.

A common theme throughout the communities that use these districts is that the permitting authority rests with the Conservation Committee of that town. Another common factor is that tidelands areas are often included in the language of these bylaws but those definitions often do not specify whether they include the water sheet or lands under water, except in places such as Chatham that specifically include submerged lands. Private conservation groups might be able to work with committees to refine bylaw language and ensure protections are enforced within those districts. Private conservation groups might also seek to expand such districts either through enlarging the districts to encompass more environmentally sensitive areas or by creating new districts to protect certain areas.

#### *Marine-Related Districts*

Several communities in this analysis have zoning districts that have specific provisions allowing for marine uses. These districts can be either specific to a coast-line area of the community or an overlay district. Among the communities, however, the common focus in these marine-related zoning districts is to protect commercial uses of the waterfront rather than conservation.

Falmouth's marine zoning district is one example. The primary purpose of the district is to preserve water-dependent uses that need access to the water. *Id.* While zoning provisions within this

district prohibit residential uses, commercial uses are allowed. These commercial uses include marinas, boatyards, and marine-related scientific research and equipment manufacture. Falmouth Zoning Bylaw, Art. IX. The zoning provisions also allow restaurants and private clubs within the district. Certain types of community uses such as parks, playgrounds, beaches, town forests, recreation buildings, or passenger rail stations and town wharves and landings are also allowed. Id.

In general, the goal of the Falmouth district does not include conservation. However, the zoning bylaw does state that an analysis of impact on water quality may be required as well as certain restrictions to protect water quality, such as a vegetated buffer. Falmouth Zoning Bylaw, Art. IX. The district also protects public access. In addition, through a special permit, non-marine related uses such as professional offices may be allowed but the space used may not exceed 50 percent of the floor area of the structure. Id.

The town of Plymouth's Zoning Bylaw also provides for a marine-related district. The community's "Waterfront" district protects marine, history, and tourism land uses. The primary goal of the district appears to be one of preserving commercial uses not conservation or environmental reasons. Plymouth Zoning Bylaw, Chapter 205-45, Waterfront. Among the commercial uses allowed within the district are boat dealers, docks and ferrying. Marine-related railway, marine repair and marine supply uses are also allowed. Further, certain types of retail uses are allowed, including fish retail markets. Special permits may be granted for restaurants, hotels and limited residential uses. Id. Uses such as industrial and general commercial uses are not allowed within the district. Id.

Other communities also have marine-related districts within municipal zoning codes. Among the special use districts in Wareham's zoning code is a "Marine District." Language within the code calls for "water-dependent and water-related uses" within the waterfront areas. Wareham Zoning Bylaw, Special Use District, § 211.5(b). The Wareham provision appears on its face to largely be concerned with the preservation of commercial uses. Marine uses are defined as marinas and related



social clubs. Wareham Zoning Bylaw, Marine Uses, § 356A. In contrast is the marine-related zoning district in Provincetown. The Provincetown Zoning Bylaw provides for a “Seashore District.” This district specifically addresses environmental protections such as a ban on the cutting of timber, dumping, and the filling of land. Provincetown Zoning Bylaw, Seashore District, § 2200.

As mentioned above, the marine-related districts that do exist within the communities are largely focused on preserving the ability for commercial uses to survive. Within the exception of the Provincetown's Seashore District, environmental and conservation efforts are not considered within many of these districts. But the fact that some communities make a conscious effort to address marine-related areas may provide a window of opportunity for future marine-related conservation efforts. Conservation groups may want to work to improve on these districts through express language protecting tidelands.

### **Targeted Residential Zoning and Open Space Ownership**

Another conservation method used by communities in southeastern Massachusetts is one that might be called targeted residential zoning. Many communities have provisions within their zoning bylaws that encourage conservation by designating certain areas to either have large lots with little residential development, or clustered residential development with large tracts set aside. The goal of this type of zoning, according to the bylaw language, is to allow for the use of the land but also for protection of land from further development. The attractive aspect of this type of zoning is that the community bylaws often allow for the open space to be conveyed and owned by private groups with the goal of conservation of open space.

Targeted zoning can come under several different descriptions. Marion employs the use of a conservation subdivision and a open space development district. The conservation subdivision requires “clustered residential subdivisions” that also has contiguous open space. Marion's open space development district requires lots of 50 acres, and at least 40 percent to be open space. Bylaws, Town

of Marion, Massachusetts, Article X, Zoning Bylaws. Both of these districts allow for the common ownership of the open space. Specifically, provisions allow for the land owner to convey open space to private conservation groups to protect it in perpetuity. This language is common in other communities.

The common ownership of open space is another conservation regulatory method among the communities that were evaluated. Often, this mechanism is within the text of the bylaws that concern residential developments as mentioned above. Typically, these are residential development districts that are more dense than other zoning districts. The common open space provisions often require that a developer set aside a large piece of acreage that will permanently remain open space. The regulations often allow for the communities or third parties to be deeded the property to ensure that permanent protection happens.

These provisions present opportunities for conservation efforts. In nearly all communities that were analyzed, the common open space ownership provisions allow for a non-profit conservation group to take over control of the open space in order to conserve it for the future. And the regulations specifically target conservation, or the continued preservation of land and natural resources, as a use that is allowed in the open space area.

For instance, Brewster's common ownership provision is similar to the text seen in the bylaws of many other communities. Under its Cluster Residential Development bylaw, Code of the Town of Brewster, Chap. 179, Zoning, §179-35, Brewster requires that 60 percent of the land area within the development be set aside for open space. *Id.* at (B)(8). This bylaw section also states that more than 50 percent of that open space must go beyond utility easements. In addition, the provision specifically states that “conservation” is an allowable use in the open space area. Most importantly, the bylaw states the common open space may be “conveyed to the Town, to a nonprofit open space organization ...”

Common open space ownerships are often present in zoning districts similar to Brewster's Cluster Residential Development bylaw. In Harwich, that community requires large, contiguous areas

of open space in so-called Flexible Cluster Development and Grid Subdivision areas in the community's Six-Ponds Special District. Harwich's goal is to protect inland and coastal wetlands areas within the district. Harwich Zoning By-law, § XVII, 9.0. That section regulates lot size, and the section specifically requires a set amount of open space that must be set aside for conservation purposes. The regulation requires that open space remain in its natural condition. The bylaw states that the open space land should not be cleared and maintained in its natural condition for habitat protection. Id. at part 9.7. And the regulation states that if the open space connects to other land held for conservation purposes, then the overall development must be set up in a manner to “minimize adverse impacts to abutting conservation land ...” Id. at part 9.7.4. Further, the policy allows for the open space to be conveyed to a nonprofit group whose “principal purpose” is conservation of open space. Id. at 9.8.2. Harwich's policy may allow conservation groups to purchase connecting open space to make contiguous coastal protection areas.

Other communities have crafted novel methods of conservation in their zoning districts that might allow for conservation groups owning open space in residential developments to protect sensitive areas that they do not own. Plymouth's bylaws allow for the development rights of a parcel to be transferred to property in other residential areas. Plymouth Zoning Bylaw, § 205-70. The specific goal of the development right transfer policy appears to be conservation of a parcel of land with a “sensitive resource.” Id.

Plymouth policy allows a property owner to transfer development rights in the sensitive area to another parcel where density restrictions are not as stringent. The transfer allows for the receiving parcel to gain more development rights than may otherwise be allowed because of the transfer of additional rights. The hook for conservation groups is that the bylaw requires the owner of the sending property to place the conservation restriction on the sending property in favor of a governmental body or “charitable” group to satisfy the transfer regulation. Or, the owner of the sending property may

satisfy the transfer requirements by simply conveying the fee to a governmental body or group to permanently protect the property. Such a policy may present an opportunity for conservation groups to work with existing property owners along the coast.

The above examples of that methods communities use to protect open space show a willingness by communities to include third party groups in the conservation effort. While it may be true that these common lands ownership provisions are largely part of bylaws that include structures, their mere existence show a willingness by communities to allow third parties to separate land from larger tracts specifically for permanent conservation efforts. Coupled with a strong focus on the protection of wetlands, lands within 100 feet of wetlands, and natural features as a whole, private groups seeking to purchase land for permanent conservation efforts should be encouraged. Communities may likely be willing to specifically create a regulatory framework to allow tidelands protection efforts.

### **Conservation Tone**

Communities in southeastern Massachusetts undoubtedly have a theme of conservation throughout their bylaws. Some have more detailed regulations than others that help conservation efforts. But the one common theme among them is a recognition in their bylaws that conservation of critical natural areas is an important duty of the community. Whether it's wetlands protection bylaws or more protections in specific areas with sensitive areas, there is a recognition that tidelands ecosystems are important resources to protect.

#### *Wetlands Provisions*

Many communities analyzed have a provision in their general bylaws that specifically protects wetlands areas from myriad human activities. The goal in the wetlands areas is conservation and protecting the natural integrity of these areas. Included in the definition of wetlands areas are tidelands areas and “land under water bodies”. Of the regulated activities in these areas are those that would have a “cumulative effect” on the value of the natural area, such as dredging or even the driving of

piles.

The town of Wareham's "Wetland Protective Bylaw" is an example of common language used by other communities. Town of Wareham By-Laws, Division VI, Article I, Wareham Wetland Protective By-Law. This bylaw specifically spells out its goal as protecting wetlands through the regulation of certain activities in sensitive areas. The regulatory authority is granted to the community's Conservation Commission. That body has the authority to grant permits for activities that would be considered to be "negative effects" on wetlands.

The protected areas under this provision include a broad range of environmentally sensitive zones. Included within Wareham's definition of wetlands that are pertinent to this discussion are coastal wetlands, beaches, dunes, estuaries, the ocean, lands under water bodies, lands subject to tidal action and lands containing shellfish. The definition includes lands within 100 feet of these areas. Id. at para.

II.

The negative effects spelled out in the language of this provision are prohibited unless approved by permit. The activities cannot have a negative and cumulative effect on what it termed "values" in the above mentioned areas. Some of those values are described as protection of wildlife habitat, fisheries, shell fish and rare species (including plants). Id. at para. I. Regulated activities include dredging, erection of buildings, destruction of the lands and activities that may have a "cumulative adverse impact" on the protected zone. The Conservation Commission may deny any permit for activities that violate the bylaw.

One aspect of this bylaw that could be of note to the tidelands discussion is the prohibition of activities next to the valued resource. The Wareham bylaw indicates that regulated activities are prohibited within 100 feet of areas such as tidelands unless permit applicants meet a higher standard of persuading the commission that no adverse impact will happen to the nearby valued resource. Similar language appears in other wetlands and environment protection bylaws. Splitting off this 100 feet next

to the wetland from the rest of the property might be a goal of the private conservation effort.

None of these communities include conservation as a regulated activity within these wetlands. Rather, that appears to be the goal of such bylaws. These wetlands bylaws could help private conservation efforts because they allow for conservation of coastal areas and adjacent property.

#### *Other Environmental Protections Provisions*

Communities analyzed in this survey also seek other ways to specifically protect the integrity of environmentally sensitive areas. Bourne's Scenic Development District protects views of certain areas, such as the Cape Cod Canal. The community's regulations bans most commercial uses in the area and restricts other uses. Bourne Zoning Bylaws, § 2140. The community of Sandwich has a Marine Limited District with a goal aimed at preserving the coast line for “ocean related uses” that are “consistent with ecological protection.” Sandwich Zoning Bylaws, § 2140. The community limits many commercial uses in the area, almost all industrial uses in the area and many residential uses. Sandwich at § 2300. However, the community does allow, by special permit, uses that include restaurant, some retail and tattoo establishments. Id. Religious, school and camping uses are allowed in this district. Id.

The language contained in the Wareham bylaw above is nearly identical to wetlands policies of the other 28 communities reviewed in this project. Protection of other environmentally sensitive areas through additional bylaws is present in nearly all communities, as is the case in Bourne and Sandwich. The protection of wetlands, additional bylaws protecting other environmentally sensitive areas, and the other efforts mentioned above, show a conservation tone among communities of southeastern Massachusetts that signals they are willing to make an effort to conserve natural areas.

#### **Subdivision Regulations**

While the bylaws reviewed do not specifically address whether tidelands may be separated from larger plots for permanent conservation protections, many communities regulate the subdivision of lands. These subdivision regulations often prohibit subdivision of property, unless there is frontage on a

public way or some type of easement to allow for such access to all subdivided parcels. The subdivision regulations often do not state exceptions for conservation purposes. This may be an obstacle for conservation efforts because of the public way frontage requirement.

The Town of Yarmouth's subdivision policy is a good example. Yarmouth is a community that specifically addresses the subdivision of lands in its bylaws. In Yarmouth, the community subdivision of land policy regulates the subdivisions of all tracts divided into two or more lots. Any such action requires a subdivision plan to be submitted to the community regarding public utilities, public way access, and other factors. Code of the Town of Yarmouth, § 171, Subdivision of Land. No exceptions exist to the subdivision law, except for lots that already border a public way. Under the bylaw, the text suggests that some type of road for a motor vehicle is a public way. *Id.* at § 171-5(D). There is no indication that a public way includes a waterway. But in the Town of Brewster, a similar subdivision policy exists that may help define public way. The subdivision policy defines a public way as being over land. Code of the Town of Brewster, Chapter 290, Subdivision Rules and Regulations, § 290-3. That distinction may present obstacles for conservation.

However, both Yarmouth and Brewster have clauses that allow for land owners to object to the subdivision regulations and requirement that a subdivision plan be approved. Yarmouth allows for a property owner to challenge whether the subdivision of property is actually regulated by the community's subdivision law. Yarmouth at § 171-5(A). Very few specifics are included in the latter language, other than text stating the Planning Board has the final decision. Brewster has a similar policy within its bylaws. Code of the Town of Brewster, § 290-4. Other communities have specific provisions related to variations of subdivision regulations. In Chatham, the community planning board has the ability to approve a variation from the subdivision regulations if the subdivision plan is deemed to be in public interest. Rules and Regulations Governing the Subdivision of Land, Chatham, Mass., § VI(B).

As mentioned above, such subdivision regulations may present an obstacle for private conservation groups seeking to split off tidelands from larger uplands tracts for permanent protection. If a community has a variation provision, such as Chatham, such conservation plans may qualify for the variation from the requirement that the subdivided lot have frontage or access to a public way. One possible way to work with existing subdivision regulations is to seek a conservation exception.

## **Conclusion**

The above mentioned zoning and general bylaws show a theme throughout the communities of southeastern Massachusetts that were analyzed during this project. All of the communities have some level of environmental protection within their bylaws. The communities all appear to be working toward conservation efforts. The fact that conservation is being discussed within the bylaws of these communities should be an invitation to private conservation groups to explore further discussions. But several issues still need to be settled for conservation groups to reach their goals.

First, there appears to be the complete lack of express language in bylaws that specifically discuss protection of the water sheet and submerged lands. Language involving submerged lands, outside of shell fishing, is absent in nearly all of the bylaws except for Chatham. Text within Chatham's bylaws may serve as a starting point in defining submerged lands and tidal lands in other communities.

Second, the bylaws of these communities do not show any hostile reaction to conservation of tidal lands by private groups. In fact, it appears to be quite to the contrary. But language in a few bylaws are concerned about public trust rights. This latter issue is not overwhelming but appears to operate in the background as many of the bylaws seek to protect the access by residents to the shoreline and the ability of residents to fish or otherwise uses the waters off the coastline.

Third, subdivision regulation within the bylaws might present an obstacle for conservation groups. The key language in question is the requirements that all new lots have frontage on a public way. Because the Nature Conservancy is seeking to split off tidelands areas from uplands areas for



conservation purposes, amendments to these subdivision regulations may be needed to allow this plan to work. It may be just that the community has to approve a variation to the subdivision code. But it may also be that the subdivision code may have to be amended so that it is not applicable to lots that are split off for permanent conservation.

The existing legal framework in the communities analyzed for this project clearly show that conservation efforts are at work within southeastern Massachusetts. Their bylaws show a clear willingness to conserve lands along sensitive coastal areas. The various methods used show different avenues for private conservation groups to explore when determining the best route to protect critical environmental areas. Conservation groups can likely achieve tidelands goals by improving on the existing legal framework in the communities in southeastern Massachusetts analyzed in this report.

### **Appendix 1: Submerged Lands Conservation Overlay District Model Bylaw**

#### **A) Purpose:**

1) To preserve the environmental integrity of coastal areas, specifically lands submerged under water.

2) To allow for conservation of submerged lands and adjacent tidal lands, while also protecting public trust rights.

#### **B) Definitions:**

1) Submerged Lands: All submerged lands under salt waters between the mean highwater mark and the outermost seaward town boundary, and all lands underneath fresh waters in ponds, lakes or rivers.

2) Tidal lands: Lands between the low water mark and the high water mark of coastal areas, which includes submerged lands.

3) Upland areas: Landward property beyond the high water mark.

#### **C) Permitted Uses:**

1) Activities and access to allow for public trust rights involving water-related uses.

2) Permits for the construction and expansion of piers, structures, and docks shall be approved by the Conservation Commission.

3) Activities that further conservation efforts of the tidelands area.

D) Prohibited Uses:

1) The cutting of timber, dumping of refuse, or dredging of submerged lands.

2) The removal of native vegetation or marine life within the tidal land area without a permit from the Conservation Commission.

3) Commercial, residential and industrial activity within the tidal land area.

E) Subdivision Variance:

1) Tidal lands may be separated from upland area tracts of land for conservation efforts by the municipal government or private non-profit organizations with the primary goal of conservation.

2) For tidal lands parcels separated for conservation, the bordering waterway may be defined as a public way.

3) The owner of property that includes uplands and tidal lands may convey ownership of the tidal lands to a municipal government entity or a non-profit organization with the primary goal of conservation. The conveyance of the land may be counted toward open space requirements under other portions of this code.

F) District Boundaries:

1) Boundaries of the Submerged Lands Conservation Overlay District may be determined by the Conservation Commission.

Sources:

Chatham Zoning Code, § II, Definitions, para. 97.

Provincetown Zoning Bylaw, Seashore District, § 2200.

**Appendix 2: City Specific Bylaw Chart**

| <b>Name</b>   | <b>Wetland Protection Bylaw/ Policy</b> | <b>Conservation Zoning District</b> | <b>Marine-Related Zoning</b> | <b>Key Marine Language in Bylaws</b> | <b>Conservation Overlay Districts</b> | <b>Common Open Space</b> | <b>Other Conservation Bylaws/ Zoning</b> |
|---------------|---|-------------------------------------|------------------------------|--------------------------------------|---------------------------------------|--------------------------|--|
| Wareham       | X                                       |                                     | X                            |                                      | X                                     | X                        |  |
| Marion        |   | X                                   | X                            |                                      | X                                     |                          | X  |
| Bourne        | X                                       | X                                   |                              | X                                    |                                       |                          | X  |
| Falmouth      | X                                       | X                                   | X                            | X                                    | X                                     | X                        | X  |
| Mashpee       | X                                       | X                                   | X                            |                                      |                                       | X                        | X  |
| Gosnold       | n/a                                     | n/a                                 | n/a                          | n/a                                  | n/a                                   | n/a                      | n/a                                      |
| Wellfleet     | X                                       | X                                   |                              |                                      |                                       | X                        | X  |
| Eastham       | X                                       | X                                   | X                            | X                                    |                                       | X                        |  |
| Barnstable    | X                                       | X                                   | X                            | X                                    | X                                     | X                        | X  |
| Sandwich      | X                                       |                                     | X                            |                                      | X                                     | X                        | X  |
| Dennis        | X                                       | X                                   | X                            |                                      |                                       | X                        | X  |
| Dartmouth     | X                                       |                                     | X                            |                                      |                                       | X                        |  |
| Fairhaven     | X                                       | X                                   |                              |                                      |                                       |                          | X  |
| Mattapoissett | X                                       | X                                   | X                            |                                      | X                                     | X                        | X  |

|              |     |   |   |   |   |   |   |
|--------------|-----|---|---|---|---|---|---|
| Yarmouth     | X   |   | X |   |   | X |   |
| Brewster     | X   | X |   |   |   | X |   |
| Harwich      | X   |   |   |   |   | X |   |
| Chatham      | X   |   | X | X | X | X | X |
| Orleans      | X   | X | X |   |   | X |   |
| Truro        | N/A |   | X |   |   |   |   |
| Provincetown | X   |   | X |   | X |   |   |
| Plymouth     | X   | X | X |   |   | X | X |
| Kingston     | X   |   |   |   |   | X |   |
| Duxbury      | X   | X |   |   | X |   |   |
| Marshfield   | X   |   | X |   |   |   |   |
| Scituate     | X   | X | X |   |   | X |   |
| Cohasset     | X   |   | X |   |   | X |   |
| Hingham      | X   |   | X |   |   |   | X |
| New Bedford  | X   |   | X | X |   |   |   |

COMMUNITY ANALYSIS:

Wareham

- > Buttermilk Bay Overlay District (Sec. 212.2/ 430, Zoning Bylaws) - protects Buttermilk Bay
- > Common Open Space - Cluster Residential Development (Sec. 818 Zoning Bylaws)
- > Marine District - Special Use District (Sec. 211.5(b)/ 356A, Zoning Bylaws)
- > Wetland Protection Bylaw (Div. VI, Art. I, Gen. Bylaws)

Marion

- > Marion Business District (Art. X, Sec. 3.1, General Bylaws-Zoning)
- > Sippican River Protection Overlay District (Art. X, Sec. 8.7, General Bylaws-Zoning)
- > Conservation Subdivision (Art. X, Sec. 10.1, General Bylaws-Zoning)
- > Open Space Development District (Art. X, Sec. 12.1, General Bylaws-Zoning)

Bourne

- > Wetlands and Natural Resources Protection (Art. 3.7, Gen. Bylaws), protects inland and coastal wetland areas.
- > District boundaries (Sec. 2120, Zoning Bylaws) - district boundaries end at mean low water line.
- > Scenic Development District (Sec. 2140, Zoning Bylaws)
- > Sensitive Use District (Sec. 2140, Zoning Bylaws)
- > Definitions (Sec. V, Zoning Bylaws) - defines Tidal Marsh, Tidal River, Tidewater Area

Falmouth

- > Waterways (Ch. 231, Gen. Bylaws)
- > Wetlands Protection (Ch. 235, Gen. Bylaws)
- > Black Beach/Great Sippewissett Marsh District of Critical Planning Concern (235-1B)

- > Zoning Definitions (Ch. 240, Gen. Bylaws): Tidal Marsh, Tidal Pond, Tidal River)
- > Marine (zoning) Districts, (Ch. 240-39)
- > Water Resource Protection District (Ch. 240-72.1)
- > Area of Critical Environmental Concern (Ch. 240-87)
- > Wildlife Corridor (Ch.240-91)
- > Coastal Pond Overlay District (Ch. 240-97)
- > Open Space ownership (Ch. 240-129)
- > Shellfish and Herring bylaw (Ch. 275)

#### Mashpee

- > Shellfish Provisions (Ch. 145, General Bylaws)
- > Waterways (Ch. 170, General Bylaws)
- > Wetlands Protection (Ch. 172, General Bylaws)
- > Conservation Lands (Ch. 173, General Bylaws)
- > Open Space Incentive Development (Ch. 174-46, Zoning Bylaws) - open space ownership
- > Mashpee River and Quashnet River Protective Districts (Ch. 174-69, Zoning Bylaws)
- > Areas of Critical Environment Concern (Ch. 174-84, Zoning Bylaws)

Gosnold - NOT AVAILABLE

#### Wellfleet

- > Wellfleet Environmental Protection Bylaw (General Bylaws)
- > Wellfleet Environmental Protection Regulations (Conservation Commission)
- > National Seashore Zoning Park, 3.2 Zoning Bylaws
- > Open Space ownership, 6.6.5 Zoning Bylaws

#### Eastham

- > Zoning Districts, Seashore District F, (Sec. 2A, Zoning Bylaws)
- > Zoning Boundary Lines - "shall extend to the full territorial limits of the Town of Eastham and shall extend into adjoining water bodies, and include the lands thereunder." (Sec. 2B, Zoning Bylawd)
- > Open Space ownership (Sec. XIX, Part VII, Para. H, Zoning Bylaws)
- > Shellfish (Chap. 127, General Bylaws)
- > Wetlands Protection (Chap. 155, General Bylaws)

#### Barnstable

- > Wetlands Protection (Chap. 237, General Bylaws)
- > Definitions (Chap. 237-13, General Bylaws) - Coastal Bank, Public Trust Rights, Trust lands
- > Districts - Marine Business District, Resource Protection Overlay District, Dock and Pier Overlay District (Chap. 240-5)
- > Resource Protection Overlay District (Chap. 240-36)
- > Dock and Pier Overlay District (Chap. 240-37)
- > Open Space ownership by trust (Chap. 240-17 M).
- > Temporary Recreational Shellfish Area and Shellfish Relay Area Overlay District (Chap. 240-37.1) 4-3-2008 (18 months).

#### Sandwich

- > Conservation Bylaw, includes wetlands protection (Chap. 7, General Bylaws)
- > Districts - Marine Limited, Water Resource Overlay District (Sec. 2100).
- > Marine Limited District (Sec. 2140).
- > Preservation Zone Transfer of Development Rights - Open Space (Section 7821 Zoning Bylaws)

#### Dennis

- > Wetlands Protection (Chap. 187)
- > Zoning Districts:
  - Mixed Use Marine (Sec. 9.3)
  - Marine Open Space (Sec. 9.4)
  - Quivet Neck/ Crowe's Pasture Resource Protection District (Sec. 4.6)
- > Marine Uses (Sec. 4.3)
- > Open Space developments and ownership - community easement (Sec. 4.4.3.6)

#### Dartmouth

- > Wetlands Protection Bylaw
- > Zoning Districts - Maritime Industrial District, 23.500/ 25.800
- > Open Space Ownership 6.8

#### Fairhaven

- > Zoning Districts (Chap. 198-14)
- Wetland Resource Protection District, (Chap. 198-15)
- > Dock & Piers regulations - protects public trust (Chap. 198-32.2)

#### Mattapoisett

- > Common Open Space. 3.8.9 (cluster subdivision), 3.9 (Special Residential Development)
- > District Types (4.1): Marine Residence (5.6); Waterfront (5.4); Mattapoisett River Aquifer Protection District Overlay District (9.1), Flood Plain Overlay District (8.1).
- > State Wetlands Protection Act enforced by Conservation Commission (Art. 22).

#### Yarmouth

- > Wetlands protection (Chap. 143-1, General Bylaws)
- > Eel protection (Chap. 148-1, General Bylaws)
- > Fisheries (Chap. 150, General Bylaws)
- > Herring (Chap. 153, General Bylaws)
- > Open space ownership to non-profit, (Chap. 402.6.2, Zoning Bylaws)

#### Brewster

- > Wetlands Protection, (Chap. 172, General Bylaws)
- > Districts: Wetlands Conservancy (Chap. 179-6, General Bylaws-Zoning)
- > Open Space non-profit ownership (Chap. 179-35, General Bylaws-Zoning)

#### Harwich

- > General Bylaws Unavailable
- > Wetlands Protective Bylaw Unavailable
- > Common Open space ownership non-profit, (Chap. 9.8, Zoning Bylaws)

## Chatham

- > Wetlands Protection Bylaw (Chap. 272, General Bylaws)
- > "Submerged Lands" defined (Sec. II, para 97, Zoning Bylaws)
- > Districts, (Sec. III, Zoning Bylaws)
- Residence Seashore Conservancy (Sec. III C6, Zoning Bylaws)
- Conservancy Overlay District (Sec. 5A, Zoning Bylaws)
- Coastal Conservancy District (Sec. 5A, Para. 5a, Zoning Bylaws)
- Open space-nonprofit ownership (Sec. IV D3(i)(1), Zoning Bylaws)

## Orleans

- > Wetlands Regulations
- > Zoning Districts:
  - Marine Business District (Chap. 164-5, Zoning Bylaws)
  - Conservancy District (Chap. 164-15, Zoning Bylaws)
  - Seashore Conservancy District (Chap. 164-14, Zoning Bylaws)
  - Shoreline District (Chap. 164-18, Zoning Bylaws)
- > Open Space ownership - NP (Chap. 164-40.1(D)(6), Zoning Bylaws)

## Truro

- > Districts, Sec. 20
- Seashore District (Sec. 20.2, Zoning Bylaws)
- > Wetlands: Unavailable

## Provincetown

- > Wetlands Protection Bylaw (Chap. 12, General Bylaws)
- > Seashore District, (Sec. 2200, Zoning Bylaws)
- > Harborfront Overlay District (Sec. 2300, Zoning Bylaws)

## Plymouth

- > Wetlands Protection Bylaw (Chap. 296, General Bylaws)
- > Waterfront (Chap. 205-46, Zoning Bylaws)
- > Light Industrial/ Waterfront (Chap. 205-53, Zoning Bylaws)
- > Buttermilk Bay District (Chap. 205-60, Zoning Bylaws)
- > Open Space ownership - NP (Chap. 205-28, Zoning Bylaws)
- > Transfer of Development Rights (Chap. 205-70, Zoning Bylaws)

## Kingston

- > Wetlands Protection Bylaw (Chap. 13, Art. 1, General Bylaws)
- > Open Space ownership - NP (Sec. 5.3.6.4., Zoning Bylaws)

## Duxbury

- > Wetlands Protection (Chap. 9.1, General Bylaws)
- > Dunes Protection District (Sec. 403, Zoning Bylaws)
- > Wetlands Protection District (Sec. 404, Zoning Bylaws)
- > Waterfront Scenic Overlay District (Sec. 404.50, Zoning Bylaws)

## Marshfield

- > Shellfish Regulation (Art. 10, General Bylaws)

- > Waterways regulations (Art. 32, General Bylaws)
- > Wetlands Protection Bylaw (Art. 37, General Bylaws)
- > Districts 3-1:
  - Residential - Waterfront (Sec. 3.01, Zoning Bylaws)
  - Business - Waterfront (Sec. 3.01, Zoning Bylaws)

#### Scituate

- > Environmental Protection (Sec. 30600, General Bylaws)
- > Wetlands Protection Bylaw (Sec. 30700, General Bylaws)
- > Harbor Business (Sec. 340, Zoning Bylaws)
- > Saltmarsh and Tideland Conservation (Sec. 340, Zoning Bylaws)
- > Open Space ownership - NP (Sec. 520.7, Zoning Bylaws)

#### Cohasset

- > Shellfish Constable (Art. IV, Sec. 15, General Bylaws)
- > Wetlands Protection (Art. XIV, Zoning Bylaws)
- > Waterfront Business (Sec. 3.1, Zoning Bylaws)
- > Common Open Space Ownership - NP (Sec. 10.10, Zoning Bylaws)

#### Hingham

- > Harbor Bylaw (Art. 15, General Bylaws)
- > Wetlands Protection Bylaw (Art. 22, General Bylaws)
- > Waterfront Business District (Sec. II-A, 9, Zoning Bylaws)
- > Waterfront Recreation District (Sec. II-A, 13, Zoning Bylaws)

#### New Bedford:

- > Wetlands defined (Chap. 9, Sec. 4720, New Bedford Code)
- > Waterfront Overlay District (Sec. 4600)
- > Zoning Boundary Definition is low-water mark (Sec. 2120)